DHRA
Defense Human Resources Activity

2014 Annual Ethics Training

The Ethical Adventures of Federal Employees and Contractors in the Workplace

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ASK BEFORE YOU ACT

- There is no attorney client privilege between you and the DHRA Ethics Counselor

- Reliance on a written opinion from an ethics counselor, after full disclosure by you, will certainly help. However, only the Department of Justice decides who it will, or will not, prosecute for criminal violations.

WHY DO YOU HAVE TO TAKE THIS TRAINING?

- Compliance with the ethics rules is a minimum obligation that all Federal employees accept as a condition of employment.
- Your position involves the exercise of discretion in sensitive areas such as all aspects of pre and post award contracting, or award and administration of grants or other similar activities.
- Because it is so important to maintain public trust in our programs and operations, and the integrity of our procurements, you have been identified as a Public or Confidential Financial Disclosure Filer. (5 C.F.R. 2634)
- As a Financial Disclosure Filer, one hour of annual ethics training is mandatory. (5 C.F.R. 2638.701)

TRAINING OBJECTIVES

- This year so many of you have asked various questions regarding contractor's in the workplace. So I thought I would take us on an ethical adventure with contractors in our workplace for this year's training.

- This training will highlight several key ethics rules, and focus on how they apply to our relationships with non-Federal entities, such as contractors, in particular situations.

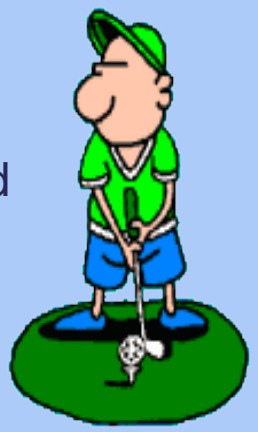
  - Gifts from Prohibited Sources
  - Performance Awards for Contractors – Oh My!
  - A Word About Personal Services
  - Morale and Welfare
  - Conflicts of Interest
  - Appearance of Lack of Impartiality

THE JOURNEY BEGINS
GIFTS FROM PROHIBITED SOURCES

IS IT A GIFT VIOLATION OR A BRIBE?

Go Ahead… Take a Guess…

A U.S. Postal Service (USPS) employee who accepted free golf games from a vendor had to explain his actions after a tipster informed investigators. The employee, had played golf with a vendor who was involved in a $100M procurement with USPS. On that occasion, the employee had accepted payment for his golf fees and his dinner. Investigators discovered that over the course of the previous year, the employee had also accepted approximately $2,000 in non-cash items.



GIFTS FROM PROHIBITED SOURCES

- THIS IS A BRIBE!!!
- The USPS employee pled guilty to bribery, and was sentenced to one year unsupervised probation and a $1,000 fine. For this employee, golf turned into a very expensive sport!

GIFTS FROM PROHIBITED SOURCES

- Ethical Principles,
  - Public service is a public trust. 5 C.F.R. 2635.101(a)(1)
  - An employee shall not, unless an exception applies, SOLICIT or ACCEPT any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or whose interests may be substantially affected by the performance or non performance of his/her duties. 5 C.F.R. 2635.101(a)(4)

GIFTS FROM PROHIBITED SOURCES

- When Does a “gift” become a bribe.
- Solicitation and acceptance of a gift becomes a bribe when it is given in exchange for official action.
  - 18 U.S.C. 201 – Bribery of public officials prohibits public officials from seeking, receiving, or agreeing to accept, anything of value for themselves or others, in return for being influenced to aid in committing a fraud on the U.S., or induced to do or omit to do any act in violation of official duty.

GIFTS FROM PROHIBITED SOURCES

- Here is another scenario - NO FREE RIDE!!!
- A common question that arises is whether or not it is acceptable to ride with the contractor to and from meetings.
  - A free ride may be considered a gift
    - Under a fixed-price contract where there are no provisions for direct reimbursement of contractor transportation expenses, the free ride from the contractor employee is a gift!
  - You must then determine whether a gift exception applies
    - $20/$50 Rule: You may accept an UNSOLICITED gift valued at $20 or less, per source per occasion, provided that you do not accept more than $50 from that source per calendar year. This rule runs to the “source” not the person. If 3 people, all from Company X, give you gifts valued at $20 ($20+$20+$20=$60) within a calendar year, you violated the $50 cap!
    - 5 C.F.R. 2635.204(a).

GIFTS FROM PROHIBITED SOURCES

WOW! GOOD NEWS!!!

- So you can accept the ride from the Mark Center to the Contractor's Office space in Rosslyn for a meeting because it's value is under $20. Save your heels from hot footing it to the Mark Center Bus station!!! WHEWWW!

BUT WAIT

- You are now in the middle of a source selection, and your contractor is competing for the follow-on acquisition. The ride is under $20… Should you accept the gift?

GIFTS FROM PROHIBITED SOURCES

- Ethical Principle: Employees shall act impartially and not give preferential treatment to any private organization or individual. 5 C.F.R. 2635.101(8)
  - Accepting the free ride while there is an on-going source selection affecting the contractor may create the appearance that you are providing preferential treatment, and is to be avoided.
  - Government officials should always consider the surrounding circumstances to avoid the appearance of a conflict of interest.
  - Remember, it is never inappropriate and frequently prudent for an employee to decline a gift offered by a prohibited source or because of his official position. 5 C.F.R. 2635.204

GIFTS FROM PROHIBITED SOURCES

- What constitutes a gift?

- Anything of value! 5 C.F.R. 2635.203(b)
  - Gratuity
  - Favor
  - Discount
  - Entertainment
  - Hospitality
  - Training
  - Transportation
  - Lodging
  - Local Travel

GIFTS FROM PROHIBITED SOURCES

- What is not a gift:
  - MODEST items of food and refreshment (not a meal)
  - Greeting cards/plaques/certificates/trophies solely for presentation
  - Loans from banks and financial institutions on terms available to the public
  - Benefits offered to ALL Government employees or ALL Military personnel

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- Well it's about that time again. Your office's current contract for support services is about to expire, and your office is working to award a follow-on contract. The solicitation is on the street and you anxiously await proposals.

- As the current contract is winding down, this is a great opportunity to give certificates of appreciation to contractor employees who went above and beyond what was required in the performance work statement.

- This is a good idea… Right?

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- No… it's not a good idea, and you are not allowed to give awards to contractors anymore.

- Here's why…

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- Ethical Principle: Employees shall act impartially and not give preferential treatment to any private organization or individual.

- It is a misuse of position to endorse non Federal entities (NFEs), such as contractors. 5 C.F.R. 2635.701-702

  - An employee shall not use his Government position or title in any manner that could reasonably be construed to imply that the agency sanctions or endorses his personal activities or those of another.

  - Likewise, employees shall not endorse any product, service, or enterprise of NFEs.

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- Providing an award to contractor employees during an on-going source selection creates an appearance that we may favor the incumbent contractor over its competitors.

- The following is an example of an award that created a very awkward situation…

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- A Defense Agency recognized a contracted supplier with a Vendor Excellence award in the category of an "outstanding women-owned small business."
- 5 months later…
- GSA official plead guilty to charges stemming from a conspiracy to overcharge the U.S. Government for supplies. Who was the conspiracy with??? None other than the same company who received the Defense Agency Vendor Excellence award. The company was reported to having paid gratuities totaling $25,000 for meals and entertainment to the GSA official and his spouse. The company also offered the GSA official a job. In exchange for these lovely perks, the GSA official invited the company to overcharge for its supplies.
- OOPPPS… An extreme example of Awards to Contractors gone awry. (Did anyone spot the criminal conflict of interest? (Bribery, 18 U.S.C. 201)

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- RULE CHANGE!!! YES… THIS IS NEW!!!
- Revised DoDI 1400.25-V451, November 4, 2013, and I quote,
  - "Awards, award programs, ceremonies, or receptions to acknowledge contributions by organizations or companies having a commercial or profit-making relationship with DoD must not be established." See paragraph 3(h).
  - "To avoid issues in connection with contractual relationships and obligations, actual or perceived conflicts of interest, and actual or perceived acts of favoritism, persons, organizations, or companies having a commercial or profit-making relationship with DoD or with a DoD Component will not be granted recognition. The single exception is if the contribution is deemed to be unrelated to and completely outside of any contractual relationship with DoD and the recognition is clearly in the public interest." See Enclosure 3, paragraph 11(b)(2).

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- In the old days…
- We were allowed to present contractor employees with a letter of commendation if approved by the contracting officer.
- Because of actual or perceived implied endorsement or favoritism created by such recognition, we are no longer permitted to make such presentations to contractors.
  - No more award ceremonies to recognize both Government and Contractor employee contribution. Government employees may still be presented awards in accordance with personnel laws.
  - No more gifts to contractors, even if paid for with your own personal funds, to recognize a job well done.

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- So…what is permitted?
- Can you buy the contractor employee a gift during the holiday season?
  - This is permitted as it is a personal gift; not an award for a job well done…
  - Does the contractor employee's employer code of ethics prevent him/her from accepting the gift? To avoid embarrassment, ask the contractor employee's supervisor if company policy allows the employee to accept a gift.
  - Use common sense and make sure the gift is appropriate…
- Can you write a letter of recommendation for a contractor employee?
  - Yes! You are permitted, per 5 C.F.R. 2635.702(b), to sign a letter of recommendation for a contractor employee using your official title and DoD letterhead, but only if it is in response to a request for an employment recommendation or character reference based upon your personal knowledge of the ability or character of the contractor employee with whom you have dealt with in the course of your Federal employment.

PERFORMANCE AWARDS FOR CONTRACTORS – OH MY!

- You can provide past performance feedback, positive or negative, coordinated with your Government Contracting Officer (CO) or his/her Contracting Officer's Representative (COR). You may also provide feedback on past performance questionnaires provided you clear your responses through the CO or COR.

- It is the contractor's responsibility to monitor its employee's performance and award accordingly.

A WORD ABOUT PERSONAL SERVICES

Colonel Finds It's Too Late to
Turn Back Time on Unethical Request

An Army Colonel was scheduled to go TDY and asked one of her contract employees to make a reservation for her mother on the same flight. When she was told that such action would be illegal, she responded that it was "alright" and that she had asked him as a "personal favor." After even more people counseled her on the illegality of her actions, the Colonel attempted to stop the contractor employee from making the flight reservation, but it was too late.

- Let's list the violations, shall we...

A WORD ABOUT PERSONAL SERVICES

- Ethical Principle: Employees shall protect and conserve Federal property and shall not use it for other than authorized activities. (Also an ethical standard at 5 C.F.R. 2635.704)
  - Government property includes
    - Real or personal property
    - Includes anything purchased with Government funds, including services of contractor personnel
    - Office supplies, equipment, mail, vehicles
    - Government records
- Because of her improper administration of the contract, the Colonel converted a non-personal services contract, into an illegal personal services contract.

A WORD ABOUT PERSONAL SERVICES

- "Personal services contract" means a contract that, by its express terms or as administered, makes the contractor personnel appear to be, in effect, Government employees. See Federal Acquisition Regulation Parts 2.101 and 37.104.
- Personal service contracts are prohibited, unless specifically authorized by statute.
- Beware that you may convert a non personal service contract into an improper personal service contract when you continuously supervise or control contractor employees.

A WORD ABOUT PERSONAL SERVICES

- It is important for Government employees to understand the arms-length nature of the relationship between the government and the contractor/contractor employees. The desire to treat the contractor as part of the team is understandable, but not always appropriate.

- Unduly close personal relationships with contractor employees can create the appearance of favoritism, and may call into question the integrity of the procurement process.

- Be mindful that contractor employees are not subject to the same ethics laws and regulations as Government employees, and are not accountable to taxpayers in the way that we are.

A WORD ABOUT PERSONAL SERVICES

- Do let the contractor supervise its employees.
- Do respect the employer-employee relationship between a contractor and its employees.
- Do ensure that contractors in the workplace are clearly identified, and clearly identify themselves as such to others.

A WORD ABOUT PERSONAL SERVICES

- Do not become so involved in contractor operations as to shift the risk of performance from the contractor, back to the Government.
- Do not participate in the selecting or recruiting of contractor personnel.
- Do not misuse Government resources by misusing contractor time or ordering work to be performed that is outside the scope of the contract.

MORALE AND WELFARE

- It's Party Time!!!

- Marion's office wants to celebrate the holidays with good cheer for all! The first thing she did was send out the invitation announcing that the office holiday party will be held December 19 from 9:00 to 5:00, bring your own booze, and all are invited! She used the general office distribution list, which includes contractor personnel.

- Marion then starts planning a good time. She would love to have a raffle drawing for a gift basket at the end of the party. She plans to sell raffle tickets for $1 to defray the cost of the basket.

- Marion also wants to have lots of food. She needs to hold fundraisers to defray the costs. She's got some great ideas. First, she's going to hold a bake sale near the 1st floor entrance of the Mark Center where there is the most foot traffic. Then Marion is going to ask the local baker to donate cakes since Federal workers are so deserving.

- What's a holiday party without the spirit of giving. Marion plans an anonymous gift exchange with a $50 limit.

MORALE AND WELFARE

- Oh my… Do you see any problems with Marion's party plans?

MORALE AND WELFARE

- Ethical Principles to contemplate as we analyze Marion's party plans.
- Public Services is a Public Trust!
- Employees shall not solicit gifts, and only accept gifts if an exemption applies.
- Employees shall not use public office for private gain.
- Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

MORALE AND WELFARE

- Let's break this party down!
- The first thing Marion did was send out the invitation announcing that the office holiday party will be held in the HQ Suite, December 19 from 9:00 to 5:00, bring your own booze, and all are invited! She used the general office distribution list, which includes contractor personnel.
- Use Good Judgment When Party Planning
  - An all day party seems a bit excessive and may very well violate 5 C.F.R. 2635.704, which requires employees to protect and conserve Government property, including employee time. How would having an all day party look to the reasonable taxpayer?

MORALE AND WELFARE

- Use Good Judgment When Party Planning
  - Bring Your Own Booze –
  - REFERENCES:
  - 41 C.F.R. 102-74.405
  - 32 C.F.R. 234.11
  - WHS Memorandum dated November 20, 2012, “Control of Alcoholic Beverages on the Pentagon Reservation and in Leased Facilities”

MORALE AND WELFARE

- Bring Your Own Booze –
  - The consumption of alcoholic beverages or the possession of an open container of an alcoholic beverage within the Pentagon Reservation or WHS leased facilities is prohibited unless authorized by the Director, DHRA.
  - If you are not within the Pentagon Reservation or in WHS managed facilities, you can have as much alcohol as you want!!!
  - **NOT**
  - JUST CHECKING TO SEE IF YOU ARE STILL AWAKE
  - **For those of you not on the Pentagon Reservation or in WHS leased facilities, you still need the DHRA Director to approve**.

MORALE AND WELFARE

- Bring Your Own Booze –
  - Written notice of such authorizations SHALL be provided to the Building Manager and Highest Ranking Representative of the Law Enforcement Organization or other authorized official, responsible for the security of the property.
  - As the host, Marion and her leadership will be responsible to ensure that users do not become intoxicated or drive while under the influence. Alcoholic beverage users are responsible for their own actions under Federal, State, and local law. Be smart, be sensible, and don't drink and drive. When planning consider the quantity of alcohol that will be available. Always consider appearances of impropriety.

MORALE AND WELFARE

- **The next thing Marion did was to send her party announcement to everyone in the office, including contractors.**
- Please keep in mind that the Government ***may not*** *reimburse a contractor for its employees' morale and welfare expenses*. See 48 CFR 31.205-14.
  - Consult with the Contracting Officer to ensure that attendance is not precluded by the terms of the contract.
  - It is the contractor's responsibility to decide whether to let its employees attend and forego payment for their time, or insist that they continue to work.
  - Include a disclaimer on party announcements:
    - "Contractor employee participation and attendance at these events are subject to the terms and conditions of the contract, and the contractor employee's company policies. The Government may not reimburse a contractor for its employees' morale and welfare expenses."

MORALE AND WELFARE

- **Next, let's look at Marion's proposed raffle…**
- Marion plans to sell raffle tickets for $1 and will hold a drawing for a gift basket at the end of the party.
- This activity is considered gambling, and is prohibited.
  - Gambling is prohibited by Federal building and grounds regulations. For GSA Federal property, see 41 C.F.R. § 102-74.395; for the Pentagon and Navy Annex, see 32 C.F.R. Part 234.
  - Gambling is generally considered to have three elements:
    - Consideration (betting something of value, usually money)
    - A game of chance, and
    - An offering of a reward or prize
  - Events that do not include all of these elements are NOT considered to be gambling. Seek ethics advice!

MORALE AND WELFARE

- **Marion plans to fundraise by holding a bake sale near the 1st floor entrance of the Mark Center. Is the location of the bake sale acceptable?**
  - Fundraising is permitted by organizations composed primarily of DoD employees or their dependents ***when fundraising among their own members*** for ***the benefit of welfare funds for their own members or their dependents*** when approved by the DHRA Component Director, after consultation with a DHRA Ethics Counselor. See JER 3-210.a(6).
- Marion cannot set up the bake sale on the 1st floor of the Mark Center because that area is traveled by all building occupants. She must conduct the fundraising among her own organization for the benefit of her own office members. A bake sale in the office's conference room is an acceptable fundraising location.

MORALE AND WELFARE

- Solicitation of Gifts is Prohibited!
- Marion plans to ask the local baker to donate cakes since Federal workers are so deserving. Uh Oh…
- My friends, this is an improper solicitation of a gift. We can never, ever, solicit gifts!

MORALE AND WELFARE

- BEWARE OF GIFT EXCHANGES WITH CONTRACTOR EMPLOYEES!
- Marion plans an anonymous mandatory gift exchange with a $50 limit.
- If a contractor employee participates in the gift exchange, the Federal employee receiving the gift has just violated the $20 gift exception AT 5 C.F.R. 2635.204(a).
- The contractor receiving a $50 gift from a Federal employee may have also violated his company's ethics rules. Contractors often have their own code of ethics that prohibit or limit employee acceptance of gifts from Federal employees.

MORALE AND WELFARE

- BEWARE OF GIFT EXCHANGES WITH FEDERAL CO-WORKERS!
- Marion's $50 gift exchange is also problematic for her Federal co-workers.
- The Rules…
  - Gifts Between Employees, 5 CFR 2635.301-304
  - Employees may not, directly or indirectly, give a gift to his official superior, and his superior may not accept the gift.
  - Employees may not solicit a contribution from another employee for a gift to either his own, or the other employee's official superior.
  - Boss's can never coerce the offering of a gift from a subordinate. If Marion was a supervisor, and if she had made the gift exchange mandatory, she would have violated this ethical standard.

MORALE AND WELFARE

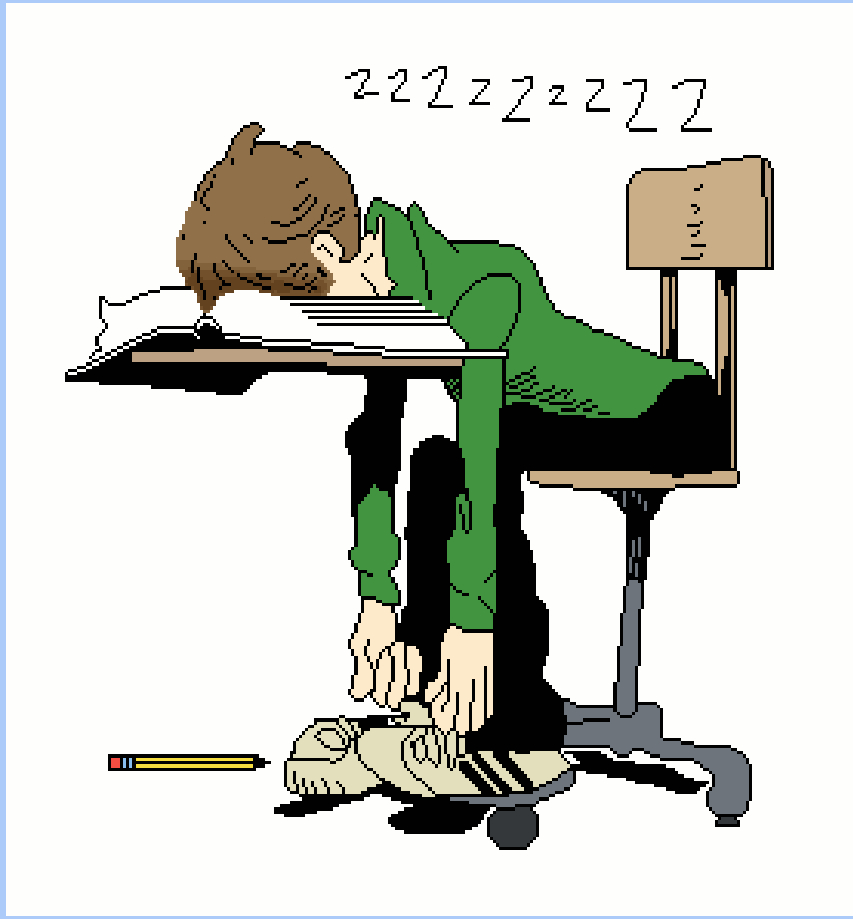
- Exceptions to the Rules Related to Gifts Between Employees
  - On an occasional basis, such as holidays or birthdays, an employee may give a gift to her superior as long as the aggregate market value does not exceed $10, per occasion.
  - A subordinate may bring in items such as food and refreshments to be shared in the office, and the boss may partake. Likewise, a subordinate may provide personal hospitality at her home and invite the boss if the hospitality is customarily provided by the subordinate to personal friends.

MORALE AND WELFARE

- Exceptions to the Rules Related to Gifts Between Employees
- Special Infrequent Occasions.
  - A subordinate may give a gift to the boss on special infrequent occasions, such as birth or adoption of a baby, marriage, illness, or upon occasions that terminate a subordinate/superior relationship, such as retirement, resignation, or transfer.
- Keep in mind that the DoD Joint Ethics Regulation, DoD 5500.07-R, paragraph 2-203 limits a group gift to a departing superior to $300. The JER also says that if one single member from one donating group also gives to another donating group, the value of gifts given from both donating groups must not exceed $300. This is why employees need to stick with one donating group.
- The ethics rules require that all donations toward a gift must be voluntarily made. This means that you cannot mandate that everyone participate.
- I'll say it again… We can never solicit gifts from contractors! Do not send party announcements to contractors when the announcement requests gift donations for departing employees.

CONFLICTS OF INTEREST

- A series of statutes set forth crimes related to conflicts of interest.
- 18 U.S.C. 201 – Bribery of public officials (discussed earlier so I won't beat this one to death).



CONFLICTS OF INTEREST

- 18 U.S.C. 203 – Prohibits employees from:

- Seeking or accepting compensation for
- Representing another
- Performing services in support of representation, OR
- Receiving money from anyone else's representation

- Before a Federal department, agency, or court (not Congress)

- In matters where the U.S. is a party or has a substantial interest

  - For example, a current DHRA employee cannot represent a prospective offeror in negotiations for a prospective contract before the General Services Administration. Nor could the employee be paid to help the offeror in drafting its proposal.

- A DoD employee whose outside employment salary is not tied to the profitability of the non-Federal entity's Federal Government contracts does not violate this statute. See DoD 5500.07-R, para. 5-401

CONFLICTS OF INTEREST

- 18 U.S.C. 205 – Prohibits employees from:

- Prosecuting or assisting in the prosecution of a claim against the U.S., or receiving a gratuity or share of a claim, in return for assisting in prosecuting such claim,

OR

- Representing another (with or without compensation)

- Before a Federal department, agency, or court (not Congress)

- In matters where the U.S. is a party or has a substantial interest.

CONFLICTS OF INTEREST

- 18 U.S.C. 207 – Prohibits FORMER employees:

- From providing certain services
- To or on behalf of non-Federal employers or other persons
- Whether or not done for compensation
- When the employee has a Lifetime Representation Ban, a Two-year Representation Ban, or a One-Year Cooling Off Period (SES only)

- I would truly enjoy taking another hour to explain each of these post employment restrictions, but alas, I am almost out of time… Please don't cry…

- If you are planning on leaving Federal service within the next year, COME SEE ME FOR POST GOVERNMENT ETHICS COUNSELING!!! PLEASE!!!

CONFLICTS OF INTEREST

- 18 U.S.C. 208 – Prohibits employees from:

- Performing official duties connected to a particular matter that also directly and predictably affects the financial interests of the following:

  - the employee;
  - the employee's spouse or minor child;
  - the employee's non-Federal or "outside" general partners;
  - a non-Federal or "outside" organization in which the employee serves as an officer, director, trustee, general partner, or employee; or
  - any person with whom the employee is negotiating, or arranging non-Federal or "outside" employment.

CONFLICTS OF INTEREST

- **18 U.S.C. 208, cont'd (here's the fine print):**
- **A conflict of interest occurs when the employee takes official action on a particular matter that also involves the financial interests of the persons listed on the previous two slides.**
- **To violate the statute, the employee must participate personally and substantially in the matter. This requires involvement that is both direct and of significance to the matter such as through decision, approval, disapproval, recommendation, rendering of advice or investigation.**
- **A particular matter is one that involves deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons, such as occurs in an audit, investigation, certification, loan application, contract award, request for a ruling, or similar matters, but may also include governmental action such as legislation or policymaking that is narrowly focused on the interests of a discrete and identifiable class of persons. It does not extend to consideration of broad policy options directed at a large and diverse group of persons.**
- **If you have a conflict of interest, then you must disqualify yourself from the matter and notify your supervisor, as well as any coworkers who are also working on the matter.**

CONFLICTS OF INTEREST

- 18 U.S.C. 209 – Prohibits employees from:
  - Seeking or receiving any compensation from
  - A non-Federal source, in return for
  - Performance of their official duties

- For example, you cannot accept compensation for teaching, speaking, or writing about matters that relate to your official position. See also 5 C.F.R. 2635.807 **and your ethics counselor for advice!**

CONFLICTS OF INTEREST

- Because of the Conflicts of Interest Statutes…
- Contracts with DoD Employees are generally prohibited.
  - Contracts for the procurement of goods and services between the Federal Government and its employees are prohibited unless an exception is authorized, such as when the needs of the Federal Government's cannot reasonably otherwise be met. See FAR 3.601 and 3.602. See DoD 5500.07-R, para. 5-402.

APPEARANCE OF LACK OF IMPARTIALITY

- WHAT IS A LOSS OF IMPARTIALITY?
  - **An actual or apparent loss of impartiality (5 CFR Part 2635, Subpart E) results from an employee taking official action on a matter that involves the BUSINESS and PERSONAL interests of those with whom he or she has a "covered relationship" including:**

- Any member of the employee's household;
- Relatives with whom the employee has a close personal relationship;
- Outside organizations in which the employee's spouse, parent, or dependent child serves as an officer, director, general partner, or employee;
- Anyone other than the Federal Government who employed the employee within the past year;
- Outside organizations in which the employee is an active participant; or
- A former employer from whom the employee, within the past two years, received an extraordinary severance payment ($10,000+) before coming to work for the Government.

APPEARANCE OF LACK OF IMPARTIALITY

- This used to be called an "appearance of a conflict of interest.“
- While similar to a conflict of interest, it covers a much broader group of business and personal interests as well as a wider group of persons and organizations.
- Unlike a conflict of interest, a loss of impartiality is not a criminal offense. However, it still could be a cause for administrative discipline up to and including removal from Federal service.
- The KEY question is, "Would a reasonable person with knowledge of all the facts see a loss of impartiality?" If the answer is, "YES," the employee must get clearance to participate from the Ethics Advisor for his or her agency or office.

LETS PLAY “NAME THAT CONFLICT”!

The game is simple: Read the fact pattern and see if you can name the violated conflict of interest statute. The answer will be on the following slide.

Hey, Whose Side Are You On!

An employee, who was not an attorney, owned a private company called Associated Labor Consultants. This company provided legal services to other Federal employees by filing legal briefs on behalf of the civilian employees and by representing them before various board hearings against the United States. The employee collected approximately $1,050 in fees and had billed out another $1,853 in fees.

- **NAME THAT CONFLICT!!!**

CONFLICTS OF INTEREST

The criminal statute violation is...

18 U.S.C. 205

Representation Ban

- The employee was charged with a civil violation of 18 U.S.C. 205. The case was dismissed without prejudice. The employee agreed to pay the United States $3,000 and to refrain from advising, counseling, or representing persons with claims against the United States.

CONFLICTS OF INTEREST

Don’t Even Get Me Started On
Organizational Conflicts of Interest

A contract manager at the Tennessee Valley Authority (TVA) power plant found himself out of two jobs after investigators learned that he had been moonlighting for the same contractor he was overseeing. As part of his responsibilities with TVA, the contract manager reviewed contractor bids and oversaw contract performance. The manager accepted a job with one of TVA’s contractors as a part-time supervisor, and worked for the contractor on his days off and vacation days.

- **NAME THAT CONFLICT!!!**

CONFLICTS OF INTEREST

The criminal statute violation is…

18 U.S.C. 208

Financial Conflicts of Interest

- Even though the manager's actions did not result in any identified financial loss to TVA, he was terminated from TVA and prosecuted for a violation of 18 U.S.C. 208. He pled guilty and was sentenced to probation and a $1,000 fine.

CONFLICTS OF INTEREST

What's Wrong With A Little Sibling Rivalry?

An employee of a DoD agency who has responsibilities for testing avionics being produced by a DoD contractor has just learned that his sister has accepted employment as an engineer with the contractor, and they will be working together. Now he can get her back for being such a smart aleck all those years!!!

- **NAME THAT CONFLICT!!!**

CONFLICTS OF INTEREST

Ha! Ha! TRICK QUESTION

- This is not a Conflict of Interest under the criminal statutes, but rather a REGULATORY violation of 5 C.F.R. 2635.502, “Impartiality in Performing Official Duties,” which requires an employee to disqualify himself from participating in particular matters when he knows that, under the circumstances, a reasonable person would likely question his impartiality if he were to continue to perform his test and evaluation responsibilities.

CONFLICTS OF INTEREST

One more because this is fun stuff

The Double Dip!!!

A senior official of the National Science Foundation (NSF) delivered four speeches to universities as part of his official duties. In exchange for those official speeches, the senior official accepted $5,500 in honoraria.

- **NAME THAT CONFLICT!!!**

CONFLICTS OF INTEREST

The criminal statute violation is...

18 U.S.C. 209

Prohibition on accepting salary for Government work
from a Non-Government source

- NSF official paid $24,900 to Dept. of Justice in return for dropping the criminal charges. Since those speeches were part of the official's duties, acceptance of compensation constituted supplementation of his salary from non-Federal sources. Federal employees may accept honoraria for activities conducted in their personal capacities, but not as part of their official duties. However, if the teaching, speaking, or writing relates to the employee's official duties, he may not accept honoraria or compensation.

PARTING THOUGHTS

- Ethics are standards by which one should act based on values
  - Values are core beliefs that motivate attitudes and actions
  - Ethical values relate to what is right and wrong
  - Ethical values demand that our actions not only comply with law but promote public confidence.
- Sometimes an action is not prohibited under the rules. However, you should always take a moment to reflect and ask yourself how your actions will be
- Think Before You Act
- Seek Ethics Advice Early and Often

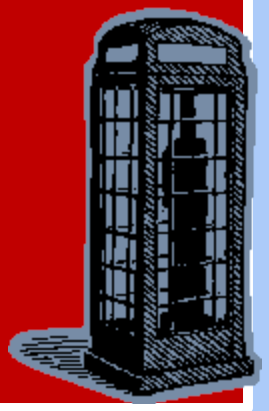
OTHER STUFF

Ethical Principle

- **Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities. 5 C.F.R. 2635.101(a)(11)**

- **Make Reports to:**
  - **Anyone in your chain of Command**
  - **Your Ethics Counselor**

- Anonymous Reporting through:
  - DoD Inspector General Hotline, (800) 424-9098
  - U.S. Office of Special Counsel, (202) 254-3640



CONCLUSION

Congratulations!
Your 2013 Annual Ethics Training is Complete. Thank You for Your Compliance with U.S. Government Ethics Requirements

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